TELLS THE FACTS AND NAMES THE NAMES

CounterPunch

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Pirates and Prisoners

A Visit to Auburn

By Marcus Rediker

Auburn is one of America's oldest and most infamous prisons. It was founded in 1816 in upstate New York as a model prison, in which work would be a significant part of punishment and rehabilitation. The first execution by electric chair in the United States took place here, the chair itself apparently designed by Gustav Stickley of Arts and Crafts fame (although, there is some debate about this). There is no debate that Stickley ran a factory at the prison, in which 300 prisoners constructed his stylish furniture, the expensive brand remaining to this day. One wonders whether they also built the ghoulish new killing machine.

I visited Auburn on two occasions recently, in April and May 2009, courtesy of the Cornell University Prison Education Program (CPEP). While I was a visiting scholar at Cornell's Society for the Humanities, Noelle Brigden, a graduate student in the Cornell's Government Department, kindly invited me to meet with her prison class on "Pirates and the Political Order." I eagerly accepted.

Auburn Prison is a forbidding place – its sheer massiveness is daunting, even suffocating. It has always been a maximum-security prison, and it feels like it, from the gloomy fortresslike architecture of stone and steel to the large number of guards to be seen almost everywhere throughout the prison. The original hammered black iron gate of the prison hangs on the wall in the public entrance. A sea of pickup trucks fills the parking lot outside.

A guard told me that the prison population at Auburn is around 1,800. The number officially listed as of January 1, 2008, was 1,747. Of these, 19 per cent are white; 21.9 per cent are Hispanic; and 57.1 per cent are African-American. (The

REDIKER CONTINUED ON PAGE 6

Waterboarding, Sensory Deprivation, Confessions Under Torture... We Have Been Here Before

When America said No!

By Peter Lee

Eighty years ago, with the publication of the Wickersham Report on Lawlessness in Law Enforcement, America learned that torture didn't work and ... promptly forgot this valuable lesson.

Debates on the morality and practical efficacy of torture periodically erupt in American politics. Now, the issue has re-emerged with the efforts of ex-Bush administration officials and allies to defend their legacy and their legal impunity against the current administration's stated desire to move beyond coercive interrogations. They have found an unlikely ally in President Obama, who appears determined to prevent the release of evidence that would enable the prosecution of American citizens under the U.N. Convention Against Torture. This shared unwillingness to condemn coercive interrogations unequivocally has had its effect. According to a recent Associated Press/GIK poll, 52 per cent of Americans believe that torture is sometimes justified – up from 38 per cent in 2005.

However, the whole issue of the efficacy and disadvantages of using physical and mental coercion to extract information from unwilling subjects was settled to the satisfaction of the American public and informed legal opinion in a pioneering government report in 1930. The Wickersham Commission was established by President Hoover to address a major social (and political) problem: the unraveling of American public order under Prohibition. George Wickersham convened a panel of experts for an exhaustive, scientific study of the roots of crime and the challenges for law enforcement.

There was widespread disappointment at the published conclusions of the Wickersham Commission. Many had hoped that the commission would formally identify the unpopular Volstead Act as the root cause of the explosion in lawlessness, and advocate its repeal. Instead, reportedly at the insistence of President Hoover, the recommendation of seven out of the eleven commissioners urging repeal of the Volstead Act was disregarded, and an overall recommendation was cobbled together calling for what could be characterized as a progressive surge of legislation, will, money, and intelligent effort to make Prohibition work.

The Wickersham Commission was quickly forgotten as the Great Depression and the election of FDR put Prohibition and its discontents in the nation's rearview mirror. However, one finding of the Wickersham Commission had a lasting impact on the national consciousness and public policy: the section on "The Third Degree" in Report No. 11 on "Lawlessness in Law Enforcement".

In 1929, at the recommendation of Roger Baldwin of the ACLU, Wickersham gave Zechariah Chafee of Harvard University the job of analyzing the efficacy and impact of coercive interrogations as a tool to combat the rise of crime during Prohibition. Chafee was a lawyer and the pre-eminent American defender of civil rights and free speech in the first half of the 20th century. He campaigned long enough to be examined by the Harvard Board of Overseers in 1921 on a charge of "radicalism" because of his opposition to the World War I sedition laws, and to be attacked by Joseph McCarthy for his championing of civil liberties in the 1950s.

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Prior to Chafee's report, the Supreme Court applied the protections of the Fifth Amendment against self-incrimination only to federal cases. On nonfederal cases, it deferred to the states, each of which had its own bill of rights, definition of unacceptable coercive interrogation, and traditions in interpretation, and declined to hear appeals.

Not surprisingly, the most horrific abuses occurred in the southern states against African Americans, as the Wickersham Report amply documented.

With heightened awareness of the problem of coerced testimony in the aftermath of the Wickersham report, the Supreme Court began to hear relevant appeals on state cases.

In 1936, the court heard the case *Brown v. Mississippi*. Its circumstances provided the damning detail that the defendants were compelled by torture to tailor their confessions to match the relevant circumstances and available evidence:

The Supreme Court reversed the conviction, thereby asserting that the Fifth Amendment right against self-incrimination through police violence was fundamental enough to override conflicting interpretations by the state courts.

Both the Wickersham Report on Lawlessness in Law Enforcement and *Brown v. Mississippi* were cited in the 1964 Miranda ruling, which seeks to limit the possibility of coercive interrogations by rendering inadmissible any testimony obtained from a suspect absent the famous warning of the right to remain silent and right to an attorney.

Chafee's influential report on the third degree, prepared for the long-forgotten Wickersham Commission, underpins American law controlling coercive interrogation. Present-day readers will find Chafee's report – based on review of court records, questionnaires, interviews and newspaper accounts – eerily and uncomfortably familiar. In those days, "enhanced interrogation techniques" were called "the third degree."

Chafee's influential report on the third degree, prepared for the long-forgotten Wickersham Commission, underpins American law controlling coercive interrogation.

The third degree refers specifically to interrogations undertaken by policemen, detectives, and, occasionally, an interesting array of other parties to extract confessions from disoriented and intimidated suspects after apprehension (the first degree) and temporary incarceration (the second degree) and before they were presented before a court and had access to their rights to a charge, lawyer and bail.

In Chafee's view, the most salient characteristic of the third degree was the practice of holding suspects "incommunicado," i.e., without the ability to communicate with family, friends or lawyers, and beyond the reach of habeas corpus.

Central to the third degree was convincing the suspects that they were without access to the protections of the Constitution and U.S. law.

Now, fast-forward nearly eight decades. In his hearing before the Combatant Status Review Tribunal, or CSRT – obtained in redacted form by the ACLU – at Guantánamo, Khalid Sheik Mohamed had this to say: "This what I understand he told me: you are not American and you are not on American soil. So, you cannot ask about the Constitution."

Often, when the police were making wholesale arrests in sweeps, they didn't even know whom they were arresting until they got them down to the jail. From the Wickersham Report:

"Suspects are sometimes apprehended in roundups or dragnet arrests, without any definite evidence of their connection with a particular crime. These wholesale arrests, of necessity, include some persons that turn out to be innocent. And arrests without reasonable cause involve a likelihood of the use of the third degree. The evidence lacking before the arrests must be supplied afterwards by such means as the police are most accustomed to use."

The parallel with the wholesale detention of individuals at Guantánamo – some of whom were obtained as anonymous subjects through financial transactions with bounty hunters – is very striking:

"A senior CIA analyst with extensive Middle East experience assessed detainees at the base in summer 2002 and concluded in a top-secret report that approximately a third of the population – at that time 200 of 600 detainees – had no connection to terrorism. Many had been 'caught in the dragnet. They were not fighters, they were not doing jihad. They should not have been there.' Guantánamo's commander, Major General Dunlavey, agreed with him and later estimated that half the camp population was innocent. An FBI counterterrorism expert went even further and told a committee of the National Security Council there were at most only 50 detainees worth holding at Guantánamo." ("Guantánamo and Its Aftermath," Human Rights Center, University of California, Berkeley, Nov. 2008, pg. 55-56.)

In a surreal indication of how indiscriminate the dragnet was, Khaled Shaikh Mohammed pointed out, in his fractured English, that there had been a very special group of detainees at Guantánamo – a Saudi Arabian hit squad, sent to Afghanistan to assassinate Osama bin Laden, which had been exposed and incarcerated by the Taliban government pre-2001: "The funny story they been Sunni government they sent spies to assassinate UBL, then we arrested them, sent them to Afghanistan/

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Taliban. Taliban put them into prison. Americans they came and arrest them as enemy combatant. They brought them here."

For the Bush administration, exposure by the International Community of the Red Cross (ICRC) appears to have been regarded as the primary threat to the coercive interrogation program, and efforts to keep the ICRC away from abused detainees appears to have been remarkably widespread. Both the public and official records contain a number of admissions that the U.S. extralegal detention and interrogation establishment in Iraq, Afghanistan and at Guantánamo had an established policy of dodging the Red Cross.

A feature of incommunicado is the need to maintain isolation of detainees from family and friends, legal recourse, or favorable publicity. Police in the Wickersham era and interrogators in the present "Global War on Terror" (GWOT) dealt with the same imperatives. "The worst abuse encountered in Detroit is the so-called trip 'around the loop.' This means shifting a prisoner from one police station to another, leaving him in each station until there is a likelihood of an attorney finding him, then moving him along to another." (Wickersham.)

The third degree was, of course, facilitated by the isolation of prisoners being held incommunicado. More disturbingly, to a certain extent the third degree was necessitated by the circumstances surrounding incommunicado. Imprisonment without warrants or strong corroborating evidence creates the need to obtain post-arrest confessions from detainees that will justify their continued incarceration if and when they come before a judge.

This extralegal environment produces a culture of harsh interrogation, conducted by people without the training, inclination, or mandate to respect the legal and moral niceties that a democracy demands as a matter of due process.

The technology of coercive interrogation really hasn't changed very much in the last 80 years, as this juxtaposition of passages from Chafee's report and current news reports and government and legal documents demonstrates:

Sleep deprivation

"The most commonly used method is persistent questioning, continuing hour after hour, sometimes by relays of officers. It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired." (Wickersham.)

"Mohammed Jawad, who has been in Guantánamo for five years since he was 16 or 17 years old, was subjected to the 'frequent flyer program' in May 2004. …[B]ased on a review of DIMS (Detainee Information Management Systems – a daily log kept of detainees at Guantánamo)… during a two-week period, Jawad was woken up from his cell and moved to different cells 112 times every 2 hours 55 minutes." (Report from Guantánamo: suicidal teen subjected to sleep deprivation, Sahr Muhammed Ally, Human Rights First.)

"Environmental manipulation," a.k.a. exposure to temperature extremes

"…[A] jail cell, which was subjected to sudden changes of temperature, from insufferable heat to extreme cold…" (Wickersham.)

"Several FBI agents at Guantánamo reported that 'detainees were intentionally subjected to extreme temperatures by unknown interrogators in an apparent effort to break the detainees' resolve to resist cooperating.'" ("Guantánamo and Its Aftermath," Human Rights Center, University of California, Berkeley, Nov. 2008, pg. 41.)

Bright, flashing lights

"Powerful lights turned full on the prisoner's face, or switched on and off, have been found effective."(Wickersham.)

"[T]hey've got the stereo banging out really loud with strobe lights flashing like ten times a second – it makes you hallucinate. And even if you close your eyes, you can still see the light and you start hallucinating…"("Guantánamo and Its Aftermath," Human Rights Center, University of California, Berkeley, Nov. 2008, pg. 45-46.)

Threat of electric shock

"In addition to whipping the appellant, the officers told him that if he did not confess they would take him to town and put him in the 'shocking machine.'" (Wickersham.)

"There is significant reference to a particular device known as the 'electric monkey,' formerly in use [in Dallas], especially against Negroes." (Wickersham.)

From the Taguba Report on Abu Ghraib:

"I find that the intentional abuse of detainees by military police personnel included the following acts: positioning a naked detainee on a MRE Box, with a sandbag on his head, and attaching wires to his fingers, toes, and penis to simulate electric torture."

Waterboarding

Waterboarding is not just the nefarious brainchild of sadistic Japanese and Khmer Rouge torturers. It turns out that waterboarding is as American as apple pie, confirmed by two citations in the appellate record, cited in Wickersham:

"The sheriff testified that when he reached the jail he found … they had the appellant down on the floor, tied, and were administering the water cure, a species of torture well known to the bench and bar of the country…

"[The] process…consisted in placing the victim on his back and slowly pouring water into his nostrils until he nearly strangled…

"The water cure had been applied four years previously in Holly Ridge, Miss…

"…[The appellant] was laid upon the floor upon his back and, while some of the men stood upon his feet, Gilbert, a very heavy man, stood with one foot entirely upon appellant's breast, and the

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other foot entirely upon his neck. While in that position, what is described as the "water cure" was administered... The "water cure" appears to have consisted of pouring water from a dipper into the nose of appellant, so as to strangle him, thus causing pain and horror..." (Wickersham.)

Beyond physical coercion, drugs were already employed as an instrument of interrogation during the 1920s:

"The case [of Decasto Earl Mayer in Seattle] involved seven days and nights of sleeplessness and protracted questioning, the Oregon boot, chloroform, 'truth serum' injections, and the 'lie detector.' ...[H]is mother was likewise given a hypodermic injection of the 'truth serum.'" (Wickersham.)

Jose Padilla is not the only GWOT detainee who claims to have been dosed with psychoactive drugs:

"(Adel al-Nusairi) is among a handful of former detainees who directly allege the use of drugs in interrogations at the military prison in Guantánamo... He was injected in the arm with something that made him tired – that made his brain cloudy. When he would try to read the Koran, his brain would not focus. He had unusual lethargy and would drool on himself."

However, the primary innovation and enduring legacy of the Bush administration, as far as the mechanics of torture go, will probably be in the area of psychological torment.

Psychological Torture

Psychological techniques were employed by police during the years covered by the Wickersham report. However, they were in their infancy. Most of them involved attempts to play on suspects' feelings of guilt or superstition by confronting them with the corpse of a murder victim.

GWOT interrogators at America's overseas prisons, on the other hand, were obsessed with breaking down detainees with psychological pressure targeting their self-image, beliefs and phobias. It began with an intense interest in the use of dogs to terrify detainees. But it mutated into a detailed and grotesque pseudoscience developed by the Behavior Science Consultation Team (or "Biscuit"), led by military psychologists, that concentrated on sexual humiliation and seems to say more about the kinks of interrogators than the psychological vulnerabilities of terrorists.

The guinea pig for the program was Mohammed al-Qahtani, the so-called twentieth hijacker. As part of an extraordinarily brutal physical and psychological interrogation regimen that the Bush administration itself belatedly acknowledged to be torture, al-Qatani was subjected to a panoply of sexual insults:

"The prisoner was forced to wear photographs of 'sexy females' and to study sets of such photographs to identify whether various pictures of bikini-clad women were of the same or a different person. He was told that his mother and sister were whores. 'He was forced to wear a bra, and a woman's thong was put on his head. He was dressed as a woman and compelled to dance with a male interrogator. He was told that he had homosexual tendencies and that other prisoners knew this. Although continuously monitored, interrogators repeatedly strip-searched him as a 'control measure.' On at least one occasion, he was forced to stand naked with women soldiers present. Female interrogators seductively touched the prisoner under the authorized use of approaches called 'Invasion of Personal Space' and 'Futility.' On one occasion, a female interrogator straddled the prisoner as he was held down on the floor." ("Medical Ethics and the Interrogation of Guantánamo 063," Steven Miles, *The American Journal of Bioethics* 7(4): 5, 2007.)

"Detainees were intentionally subjected to extreme temperatures by unknown interrogators in an apparent effort to break the detainee's resolve to resist cooperating."

The ferocious interrogation of al-Qatani serves to introduces a universal figure in coercive interrogations around the world and throughout history – the medical practitioner who takes an elastic view of the Hippocratic oath. He appears both in the Wickersham Report and in accounts of Guantánamo.

From Wickersham: "In one case a police surgeon was present. A New York official tells of a surgeon holding the victim's pulse during a beating so that he could tell the police how much the man could stand."

A Guantánamo inmate – who was released during the Bush administration – told Agence France-Presse (AFP): "I once saw a doctor with a group of guards. The doctor pointed to different places on a body of a prisoner saying 'hit him here.' After the beating, there were no visible marks on the body, but that man was in such pain he couldn't move," he said. ("Freed Guantánamo inmate alleges systematic beatings," AFP, Dec.18, 2008.)

Compliant medical supervision was and is a key element in the enhanced interrogation regime.

As a participant in a Guantánamo meeting on "Counter Resistance Strategy" memorably put it, "If the detainee dies, you're doing it wrong... Any of the techniques that lie on the harshest end of this spectrum must be performed by a highly trained individual. Medical personnel should be present to treat any possible accidents."

From a discussion of the intensive interrogation of Mohammed al-Qatani, it is apparent that medical personnel were not only monitoring the interrogation; they kept it going, using IVs to pump al-Qatani full of fluids whose necessity and function seem open to question, and stepping in to stabilize him for further interrogation when hypothermia, induced by "the deliberately abusive use of an air conditioner," threatened cardiac arrest: "[A] physician evaluated al-Qahtani in the interrogation room and told him that he could not refuse medications or intravenous fluids, and that he would not be allowed to die." ("Medical Ethics and the Interrogation of Guantánamo 063," Steven Miles, *The American Journal of Bioethics*, 7(4):5, 2007.)

The parallels between the 1920s and the 2000s go beyond techniques and tactics to excuses and justifications.

"He Fell Down Stairs"

At the bottom of the heap, the screws always try to explain away evidence of blatant physical abuse: "The police attempt to explain many of these cases of visible injuries by saying the prisoners fell downstairs... 'Prisoners frequently fall downstairs; but officers do not.'" (Wickersham.)

From Iraq: "The detainee was beaten

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and interrogated for about two hours… Nick said, the interrogators told guards and other soldiers that the detainee had inflicted the damage on himself: 'They blamed it on him – a falling-down-the-stairs deal or whatever.'"("No Blood, No Foul"; Soldiers' Accounts of Detainee Abuse in Iraq, Human Rights Watch, June 2006.)

Then, whether it's rumrunners or al-Qaeda, the inevitable "It's War!" rationale is trotted out:

"Against a hardened criminal I never hesitated. I've forced confessions – with fist, blackjack, and hose – from men who would have continued to rob and kill if I had not made them talk… Remember that this is war after all! I'm convinced my tactics saved many lives." (Wickersham.)

In the immortal words of Alberto Gonzales: "…the war against terrorism is a new kind of war… In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions…" (Memo from White House Counsel Alberto Gonzales to Pres. George W. Bush, dated Jan. 25, 2002.)

Finally, the relevance of the Wickersham report extends beyond its evidence to its authoritative conclusions concerning the adverse consequences of coercive interrogation regimes.

In the Wickersham report, Chafee systematically discussed four defects of the third degree regime: false confessions, the negative impact on police efficiency, problems created for prosecutions, and the way it "brutalizes the police, hardens the prisoner against society, and lowers the esteem in which the administration of justice is held by the public."

By now, we should not be surprised that all these defects have appeared in the administration of coercive interrogations in the GWOT. The wholesale tainting of terrorism prosecutions and damage to America's image and interests caused by the coercive interrogation regime are well known and shall not detain us. Chafee's first two points concerning false demand further examination.

The Wickersham report is especially useful in documenting torture's primary Achilles heel: multiple instances of false confessions extracted from innocent defendants by coercive interrogation. One case demonstrates the pitfalls of using torture to extract what might be termed "actionable intelligence."

"Bell described the manner in which he was whipped and the instruments of torture applied to him and insisted in his testimony that he denied and continued to deny for awhile any knowledge of the alleged murder, but that little by little, in answer to repeated questions and statements made to him… in order to escape the torture, he confessed to the commission of the crime... [he] was whipped with a leathern strap attached to a handle; the strap was 3 feet long and 3 inches wide… Under these conditions, Bell finally made his confession. Then the sheriff came, and again he told of how he had drowned Julius and taken $20 from his person and where he had hidden the money. When search was made, no money was found;

"It is far pleasanter to sit comfortably in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence."

he was visited again and again whipped; he told of another place where the money was hidden, and when it was not found at that place, he was whipped again until he told of another place, saying that he had been lying and not to whip him any more and he would tell them where the money was; he told them another place and yet the money was not found." (Wickersham.)

Bell's desperate attempt to give his torturers what they want resembles the experience of Khalid Sheikh Mohammed, who was waterboarded 183 times and gave his Guantánamo interrogators what they wanted or, more accurately, what they *thought* they wanted: "…be under questioning so many statement which been some of them I make up stories just location UBL. Where is he? I don't know. Then he torture me. Then I said yes, he is in this area …" (KSM CSRT transcript, 2009, p. 15.)

The second powerful argument against the third degree made in the Wickersham report is that wherever there is the opportunity to torture, one is likely to find vicious, lazy, and/or ineffective cops:

"The third degree accustoms police and prosecutors to proving their case out of the prisoner's mouth. It thus tends to make them less zealous in the search for objective evidence." (Wickersham.)

"An official with experience in India put the matter this way: 'There is a great deal of laziness in it. It is far pleasanter to sit comfortably in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence.'"

"If you use your fists, you are not so likely to use your wits." (Wickersham.)

The central justification for coercive interrogations has always been that they are necessary: despite the abuses and adverse consequences, they are the only way to get the tough and dirty job done.

In 1930, the Wickersham report briskly disposed of that argument by comparing two cities with radically different approaches to law enforcement:

"That in fact there is no correlation between the third degree practice and efficient police administration the evidence leaves us in no doubt. Chicago, with the third degree highly developed, is a particular sufferer from professional and violent crime. Boston has virtually no third degree, and a high standard of police efficiency."

Lawrence Wilkerson, Colin Powell's chief of staff when Powell was secretary of state during the first presidential term of George W. Bush, performed a similar exercise. Wilkerson looked at two different periods of time – instead of two cities – to evaluate the claims made for the necessity of coercive interrogations in the age of the Global War on Terror.

"My investigations have revealed to me – vividly and clearly – that once the Abu Ghraib photographs were made public in the Spring of 2004, the CIA, its contractors, and everyone else involved in administering 'the Cheney methods of interrogation, simply shut down. Nada. Nothing. No torture or harsh techniques were employed by any U.S. interrogator. Period. People were too frightened by what might happen to them if they continued.

"What I am saying is that no torture or harsh interrogation techniques were employed by any U.S. interrogator for the entire second term of Cheney-Bush, 2005-2009. So, if we are to believe the protestations of Dick Cheney, that Obama's having shut down the 'Cheney

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state population is 74 per cent white, 16 per cent Hispanic, and 17 per cent African-American.) A little over half at Auburn are from New York City. In terms of religious affiliation, just under half are Christian, about 20 per cent are Muslim, and a little more than 11 per cent are Rastafarian. Almost 6 per cent are veterans. Three in four are described by the state as "violent felony" offenders – the overwhelming majority convicted of murder, robbery or burglary. The mean sentence at Auburn is 15 years, which is higher than the median for the state system. A third at Auburn have served more than six years, so there are quite a few wise old heads around. It is unknown how those admitted into the CPEP reflect these larger figures, but I could see that white prisoners were better represented among the students, probably because admission to the program was competitive and they had backgrounds of better schooling.

Noelle and I made our way through the metal detectors and a long maze of corridors, through the yard alongside the basketball court and weight equipment, to the prison school and our classroom. Soon 15 students, coming from breakfast, began to file in. A big, burly, tattooed one (prisoner 1) smiled at me and said, "You've come to meet with the real pirates!" So I had.

As we went around the room and introduced ourselves, almost all of the prisoners made it a point to tell me how long they had been incarcerated, at Auburn or elsewhere. The range was two to 21 years, with most people in double digits. Many spoke gratefully of the opportunity to "improve themselves" in this program.

As class discussion was beginning, prisoner 2 wanted to know whether I had ever been in a situation like this. The subtext of the question was: have you been in prisons and what is your attitude toward prisoners? I answered that I had never been imprisoned myself but that members of my family had, including an uncle who had managed to escape from a federal joint in Colorado. (This piece of information produced approving, even admiring nods.) I added that I been in prisons many times, not least to visit political prisoner Mumia Abu-Jamal, on whose case I had worked for years. Upon the mention of Mumia's name, an electrical current of murmurs surged around the room, punctuated by prisoner 3 who spontaneously blurted out, "Power to the People!" It was the old Black Panther slogan.

The students had read portions of my book, *Villains of All Nations: Atlantic Pirates in the Golden Age,* and we had one of the very best discussions of it I have ever witnessed. This was partly because Noelle's good teaching had already generated fruitful discussion on many themes. It was partly because prisoners, like everyone else, are fascinated by pirates and could not wait to talk about them. But mostly it was because this group was hungry for learning, interaction and the exchange of views. Their questions and comments signaled repeatedly how closely they had read the

A big, burly, tattooed prisoner smiled at me and said, "You've come to meet with the real pirates!" So I had.

assigned material. There was never a point in our two-hour meeting when several hands weren't waving politely to join in the discussion next.

A few of the highlights included a suggestion by prisoner 4: "Let's compare the self-organization of pirates in the eighteenth century to the self-organization of prisoners today." We did, with this conclusion: pirates were better at overcoming their own internal differences.

Another subject of special interest to the Auburn prisoners was how pirates would, upon the capture of a ship, enact what they called the "distribution of justice" – that is, call the sailors of the captured vessel up on the main deck and ask how their captain treated them. If the sailors gave a bad report, the captain was in trouble because pirates, who had been common sailors themselves, would act as avengers against abusive captains, who were many in the early eighteenth century.

I decided we should act this out. I asked prisoner 5 to come up to the front of the room and play the part of captain. He did, with relish, taunting his sailors (the other students) as he came forward. Then I asked prisoner 6 to come up and tell everyone how the captain treated him and his brother tars. "He treats us very badly," was the solemn verdict. "Lash him," was the cry. The captain started to argue and was told to shut up or he would make matters worse. Prisoner 7 handed me (as the pirate quartermaster) a pencil, which, he told me, was "cat-o'-nine-tails." The captain looked increasingly ill at ease, as if he was no longer quite sure we were role-playing. Finally, the laughter exploded and everyone sat down as good-natured banter broke out.

We then discussed themes such as the pirate as "other," the power in labeling and defining "criminals," the social uses of "deviance," and what pirates themselves were up to as they built autonomous communities after spending their working lives as sailors who had experienced low wages, poor food, harsh discipline and high mortality. We also had a spirited discussion of why pirates remain romantic folk heroes.

With about half an hour to go, prisoner 8 thanked me for visiting with them and began a rather formal, earnest goodbye. When prisoner 9 spoke up to do the same, I interrupted, asking, "Why are you saying goodbye now? Don't we have half an hour to go?" Answer: "Whenever the guards see that we are really into something, their first instinct is to break it up."

The last person to speak was prisoner 10, who was clearly a leader. He had done a lot of time, he was active in all kinds of organizations, and he was treated with great respect, even a touch of deference, by the others. He said that on behalf of everyone he wanted to invite me back to speak to a larger group of prisoners on the subject of my most recent book, *The Slave Ship: A Human History*.

As it happened, the guard who was assigned to the visitor let us take the full class period. After he signaled that time was up and everyone began to leave, prisoner 11 asked with an ironic grin, "You do know, don't you, that we call this place 'the modern slave ship'?" Yes, I knew. The next meeting, should it happen, would have a powerful political charge.

On the way out, I left copies of my books, including *The Slave Ship*, with a guard at the entrance, requesting that they be placed in the prison library. Given the look he gave – first to the books, then to me – I was not confident that this would happen.

Somehow the word of the invitation to

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return got to Jim Schechter, director of the CPEP, and arrangements were made for May 8. A few days before that date, Jim wrote with bad news. There had been a lockdown at Auburn: the lecture and all other "voluntary programs" had been canceled.

The lecture was rescheduled for May 21. When I arrived (with Jim and Noelle), I found that there were many opinions about the cause of the six-day lockdown. One guard explained that it was time for "spring cleaning" – shakedowns and searches for weapons in preparation for coming warm weather. Another said that the lockdown was simply a rehearsal, practice for a real emergency. Prisoner 12 had a different interpretation, saying dryly: "You know how prisons are. They always have to show who is in charge."

We gathered for the lecture in the prison chapel off the yard. It was a room of modest size with old oak pews (built by Stickley?), a low ceiling and poor lighting. The rather large number of prisoners who attended (about 70, most of those enrolled in the full Cornell program) required several guards to be present. After the guards listened to Jim Schechter introduce me, they were apparently reassured of the tameness of the occasion and retired to the chapel anteroom beyond two big glass doors, leaving us to ourselves.

After *The Slave Ship* was published in the fall of 2007, I gave dozens of lectures and informal talks about it, to all kinds of groups, academic, public, and community. But never in a setting like this, in which everything I said about incarceration, violence, and the horrors of life aboard an eighteenth-century slave ship would be immediately translated into the idiom of the twenty-first century prison. That my approach was one of "history from below," stressing the social realities of expropriation, enslavement and resistance, made the transposition all the easier.

In the lecture I talked about the broad context of the Atlantic slave trade, how the many millions transported were central to the establishment of the plantation system and, therefore, to the rise of modern capitalism. I talked about the slave trade as a human experience, the deliberately inflicted violence and terror of the Middle Passage. I talked about the nature of community among the enslaved aboard the ship, how they overcame ethnic differences to create a common culture of resistance that would be carried off the ship and into the slave societies of the United States, Jamaica, Puerto Rico and Brazil. (This point seemed to have a special resonance.) I concluded by talking about what kind of movement from below was necessary to abolish the slave trade, in Great Britain (1807) and the United States (1808).

The students participated in the lecture while it was going on, joining in call-and-response style (we were in the chapel, after all) with comments such as "uh-huh," "that's right," "say it," and, "now you're talking." They were as attentive and engaged an audience as I have ever seen.

When the lecture ended, they gave me, to my surprise, a standing ovation. The guards in the back snapped to attention, looked around alertly, then sat back down after the prisoners themselves did so. Then up shot the hands, lots of them. I was surprised again when it became clear that quite a number of prisoners had already read *The Slave Ship*, and when others complained that some not-to-be-named people had been hogging the copy of the book from the library! The guard had placed it there after all.

I talked about the nature of community among the enslaved aboard the ship, how they overcame ethnic differences to create a common culture of resistance.

The second question, asked by prisoner 13, went straight to the core issue. "OK, violent incarceration is central to American history, beginning with slave ships and coming down to where we are right here, right now, today. So, what is the relationship between the two?" The next hour was spent discussing this question and numerous others. Many opinions were expressed, and some had considerable learning behind them. Prisoner 14 discussed "the struggle to remember this history," both inside the prison and outside, in society at large. Several prisoners asked for specific references, wanting to know the names of authors and full titles of books I had mentioned. Another wanted the URL of the Transatlantic Slave Trade Database. Prisoners will ask friends and loved ones to go online, print out information, and mail it to them. The questions and comments reflected a range of personal, political, historical, contemporary and scholarly interests.

When it came time to end the session, Jim Schechter took the podium and announced that he would not have believed that this kind of discussion could have happened in a prison. I was stunned by what had transpired: I had found a shocking degree of freedom of speech where one might have least expected it, inside Auburn Prison, for me and, it seemed, for everyone else. We milled around afterward for a while before the prisoners began to file out, trudging slowly out the chapel door into the sunlit yard.

In the end, I was much impressed by the great good work of the Cornell Prison Education Program, which has been built over the years by Cornell faculty, students and community members, especially by Pete Wetherbee (English) and Mary Katzenstein (Government), and which has recently expanded its course offerings. I would wish for programs of this kind throughout the nation, not only for the benefit of the prisoners – it has been proven again and again that education is the only thing that keeps former prisoners from coming back – but for the benefit of people like myself, who get to see at least one part of what is going on in normally opaque places like Auburn Prison, this in a nation with a record 2.3 million incarcerated, one in a hundred of our national population.

Most of all, I was impressed by the intelligence, the thoughtfulness, the engagement, the curiosity – in short, by the life of the mind – I found among the people inside Auburn Prison. That mind, I am pleased to report, cannot be imprisoned. It is generating a lot of electricity at Auburn these days, of a variety far different from the one for which the prison is known. **CP**

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interrogation methods' will endanger the nation, what are we to say to Dick Cheney for having endangered the nation for the last four years of his vice presidency?" (Lawrence Wilkerson, "The Truth About Richard Bruce Cheney," May 13, 2009.)

It seems that the Bush administration itself didn't feel strongly enough about the necessity of "enhanced interrogation techniques" to persist in employing them after they had become politically and legally inconvenient. The Bush administration's detention and interrogation regime centered on Guantánamo was a disaster. Approximately seven hundred detainees passed through the facility; over four hundred of them were found to have been detained unnecessarily and were quietly repatriated by the Bush administration, leaving the Obama administration to deal with the toxic remainders.

The attempt to construct an effective and legally watertight system of coercive interrogations foundered on significant opposition within the Bush administration and collapsed within three years. Before the program was concluded, it had conducted intensely coercive interrogations that fit any reasonable definition of torture on a small number of detainees; the rest of the inmates were brutalized to varying degrees by cruel treatment by their interrogators and the notorious IRF teams both during the program and after it ended, and suffered the psychological agonies of indefinite detention in a legal and geographic limbo.

It is doubtful that the intelligence and security gains outweigh the damage caused by the demoralization of the U.S. national security apparatus, the wholesale tainting of the terror prosecutions, and the damage to America's international standing. The whole exercise was a spasm of hubris, cruelty and incompetence that lasted for only a few years, but whose consequences will take decades of work to clean up.

The only reason that this program has not been openly and unambiguously exposed as a colossal failure is the shared desire of the Obama and Bush administrations to suppress embarrassing and legally damaging information that would provide both the public and interested prosecutors with an authoritative picture of the true magnitude of the program's failures and dire consequences.

Instead, Bush administration officials take advantage of the public's ignorance to erect political defenses against prosecution:

"[I]n an interview Tuesday with Scott Hennen, a conservative radio show host from Fargo, N.D., Cheney agreed with Hennen's assertion that 'a dunk in water' may yield valuable intelligence from terrorism suspects. …

"'Well, it's a no-brainer for me,' Cheney said."

Unfortunately, Zechariah Chafee was not available to do Dick Cheney's thinking for him. Fortunately, Chafee's investigation of the third degree is still available to guide us today.

It is remarkable and somewhat disturbing that, in the 21st century, we must still rely on Zechariah Chafee's 80-year-old report for the most authoritative repudiation of extralegal detention and coercive interrogation. **CP**

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